

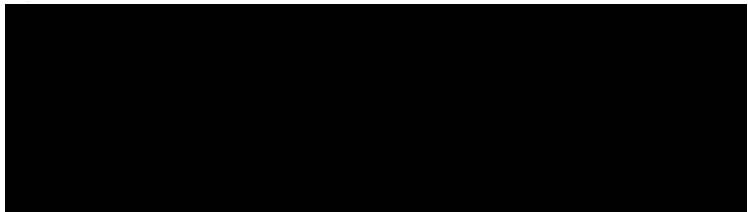
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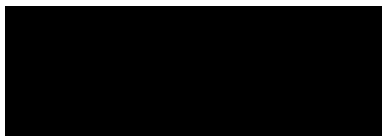


U.S. Citizenship
and Immigration
Services



FILE: SRC 03 021 50087 Office: TEXAS SERVICE CENTER Date: APR 28 2004

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)


ON BEHALF OF PETITIONER:

SELF REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

 Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a non-destructive testing firm, and seeks to employ the beneficiary as an international sales representative. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation, and because the beneficiary does not qualify to perform the duties of a specialty occupation. On appeal, the petitioner asserts that the proffered position qualifies as a specialty occupation, and that the beneficiary is qualified to perform the duties of a specialty occupation.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

The petitioner was represented in these proceedings by [REDACTED] of the Hispanic Help Hot Line, Oklahoma City, OK. Ms. [REDACTED] does not, however, appear to meet any of the regulatory requirements to qualify as a representative under 8 C.F.R. § 292.1. As such, the petitioner shall be deemed to be self represented. The record of proceeding before the AAO was, however, considered in its entirety in rendering this opinion.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceedings before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B with attachments. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an international sales representative. Evidence of the beneficiary's duties was included in the I-129 petition. The duties were described as follows: international marketing /business development; and responsible for sales of product and company services. The record does not provide any additional description of the duties to be performed by the beneficiary. The petitioner requires a minimum of a bachelor's degree in a business related field for employment in the offered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are presented in such vague and generic terms that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis. There is no indication as to what duties would be performed by the beneficiary in marketing the petitioner's products, or developing new business. It cannot be determined from the generic description of duties the complexity of the duties to be performed, what level of educational expertise would be required to perform them, and whether the performance of those duties requires the theoretical and practical application of a body of highly specialized knowledge. Since it is impossible to determine the specific duties of the proffered position, the petitioner has not established that the position meets any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, it does not qualify as a specialty occupation and the director's denial of the I-129 petition shall not be disturbed.

The beneficiary's qualifications to perform the duties of the offered position shall not be discussed as the petition is denied on another ground.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal shall accordingly be dismissed.

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ORDER: The appeal is dismissed. The petition is denied.